

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Eric Davis,

Plaintiff,

**V.**

P. Freeman, Supervisor Gillespie,

Defendants.

Case No. 4:23-cv-05005-JDA

## OPINION AND ORDER

This matter is before the Court on a Report and Recommendation (“Report”) of the Magistrate Judge. [Doc. 47.] In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pre-trial proceedings.

On September 4, 2024, Defendants filed a motion for summary judgment. [Doc. 43.] On September 5, 2024, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment/dismissal procedure and the possible consequences if he failed to respond adequately. [Doc. 44.] On November 20, 2024, after Plaintiff failed to respond to the summary judgment motion, the Magistrate Judge issued a Report recommending that this action be dismissed for failure to prosecute or, in the alternative, that Defendants' motion for summary judgment be granted. [Doc. 47.] The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. [Doc. 47-1.] Plaintiff did not file objections to the Report, and the time to do so has lapsed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” (citation omitted)).

The Court has reviewed the record in this case, the applicable law, and the Report of the Magistrate Judge for clear error. Having done so, the Court accepts the Report and Recommendation of the Magistrate Judge and incorporates it by reference to the extent it is consistent with this Order. Accordingly, this action is DISMISSED with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. As a result, Defendants’ motion for summary judgment [Doc. 43] is FOUND AS MOOT.

IT IS SO ORDERED.

s/ Jacquelyn D. Austin  
United States District Judge

December 19, 2024  
Florence, South Carolina

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.